CLARENCE WILFRED

v.

TENGKU ADNAN TENGKU MAHMUD & ANOR.

HIGH COURT MALAYA, KOTA BHARU
MOHAMED ZAHIR J
[CIVIL SUIT NO. 128 OF 1977]
22 MAY 1982

TORT: *Defamation - Damages for publishing statements alleged to be libellous - Defence of justification - Letter from 1st defendant to plaintiff typed out by typist and despatched through office boy - Whether it constitutes publication - Act done in the ordinary course of business and reasonable and usual course adopted - Whether justified in writing letters - To maintain discipline and good conduct - Qualified privilege.*

The plaintiff, an English Lecturer at the Maktab Perguruan Pengkalan Chepa, Kota Bharu at the material time, sued the 1st defendant the Principal of the College and the 2nd defendant being his employer, for damages for publishing statements alleged to be libellous on five counts. There were complaints that the plaintiff had talked about sex in the class and that the girls were embarrassed which the plaintiff's own witness had stated. The letters contained statement alleging that the plaintiff was involved in the activities complained of in the libellous statement.

The defendants admitted writing some of the words alleged to have defamed the plaintiff but pleaded justification. As to the letter of 22 September 1976, the defendants denied that there was "publication" of such letter to the typist and office boy as the letter was directed personally to the plaintiff and that the letter typed out by the typist and despatched through the office boy was an act done in the ordinary course of business and reasonable and usual course adopted in the circumstances and denied there was "publication". The defendants also pleaded that the letters were written on an occasion of qualified privilege, its incidental publication to the typist was also privileged and that it did not constitute "publication". They also pleaded that the 1st defendant as the Principal was justified in writing the letters for the purposes of maintaining discipline and good conduct.

Held:

[1] There was sufficient evidence of the alleged words complained of. From the evidence, the Court came to the conclusion that there was sufficient defence of qualified privilege. The 1st defendant being the Principal of the College was justified in taking the action that he did.

[2] There was not an iota of evidence adduced by the plaintiff that the 1st defendant had instigated the writing of the complaints by the students on which some of the libels were based as they were written by the students on their own free will.

[3] The defence of qualified privilege should succeed. The 1st defendant being the Principal uttered certain of the allegations which were true in relation to the plaintiff and were made in the discharge of a public duty. He made the statements honestly and without any indirect or improper motive.

[Claim dismissed with costs.]

Case referred to:
Pullman v. Hill [1891] QB 527

For the plaintiff - A. Gomez; M/s. Gomez & Co.
For the defendants - Fong Seng Yee; SFC

JUDGMENT

Mohamed Zahir J:

The plaintiff sued the defendants for damages for publishing statements alleged to be libellous on five counts. The plaintiff was at the material time an English Lecturer at the Maktab Perguruan Pengkalan Chepa, Kota Bharu and the 1st defendant being the Principal thereof. The 2nd defendant being his employer. The letters or reports on which libellous statements were alleged to have been written were dated 20 July 1976; 17 August 1976; 18 August 1976; 16 & 22 September 1976.

The defendants admitting writing some of the words alleged to have defamed the plaintiff, pleaded justification.

As to the letter dated 22 September, the defendants deny that there was publication of such letter to the typist and office boy as the letter was directed personally to the plaintiff and that the letter typed out by the typist and despatched through the office boy was an act done in the ordinary course of business and reasonable and usual course adopted in the circumstances and deny there was publication.

The other defence was that the letters were written on an occasion of qualified privilege, its incidental publication to the typist was also privileged and does not constitute publication. The defendants further pleaded that the 1st defendant as Principal was justified in writing the letters for the purpose of maintaining discipline and good conduct.

Publication is meant the making known of the defamatory matter, after it has been written, to some person other than the person of whom it is written. In *Pullman v. Hill* [1891] QB 527, it was held that publication to an officer of a plaintiff company was sufficient. In the instant case, I am of the opinion there was sufficient evidence of the alleged words complained of.

From the evidence I came to the conclusion that there were sufficient defence of qualified privilege. The 1st defendant being the Principal was justified in taking the action that he did. The plaintiff's own witness, PW2, stated that the plaintiff talked about sex in the class and he felt that the girls were embarrassed. PW2 stated the plaintiff did not discuss sex but talked about it and the students all listened. It was a one man show. He also admitted that he signed AB30 and 31 which were true to the best of his knowledge and it did not come out from 1st defendant. AB30 and 31 was a statement alleging that the plaintiff was involved in the activities complained of in the libellous statements.

I believe the evidence of 1st defendant. He appears to be a straight-forward person who would not have put any of his teachers into trouble. From the evidence of the plaintiff himself and his demeanour and the evidence of the defence, I came to the conclusion that any Principal would have been driven to take action in the manner taken by the 1st defendant. 1st defendant did what is expected of a Principal of the College.

Just before 1st defendant completed his examination-in-chief, the plaintiff discharged his Solicitors. This is what I wrote in my notes at p. 43:

> Mr. Gomez informs Court that his client, the plaintiff, thinks it is better for him to handle the case himself. Mr. Gomez asks the Court's permission to discharge himself.

I allowed Mr. Gomez's application and thereafter the plaintiff appeared in person. At p. 47, I had written these notes:

> The plaintiff acted very rudely and shouted at the top of his voice when cross-examining.

Then a while later he informed the Court that he was not a Barrister and was fighting for his own reputation. He forgot he just dismissed his Solicitor from acting for him.

There was the evidence of the attitude of the plaintiff by DW2 where the plaintiff was alleged to have said: "They were all fools."

DW3 gave evidence that the book used by the plaintiff: "Future Shock" was not one of the recommended books for the College. There was the evidence of DW4 who stated that the plaintiff when asked by 1st defendant why he did not attend the convocation, his reply was "I am not going to answer you. When this witness asked the plaintiff in a friendly gesture why his car was damaged, the plaintiff replied: "None of your business".

The evidence of the attitude of the plaintiff was further corroborated by DW5. This is what the plaintiff was alleged to have said: "Look here Tengku Adnan, I am working for the College and not for Tengku Adnan".

DW6 in his cross-examination again testified about the plaintiff talking on free sex. This is further supported by the evidence of DW7.

There was sufficient evidence adduced by the defence that the documents AB30 and 31, AB38, AB61 & 62 were not instigated by the 1st defendant as alleged in the Statement of Claim. They were written by the students on their own free will. In fact there was not an iota of evidence adduced by the plaintiff that the 1st defendant instigated the writing of these documents on which some of the libels were based. On the contrary the plaintiff's own witness, PW2, stated that the contents of AB30 & 31 relating to the plaintiff were true and that they did not come out from the 1st defendant.

I am of the opinion the defence of qualified privilege should succeed. The 1st defendant being the Principal uttered certain of the allegations which are true in relation to the plaintiff and are made in the discharge of a public duty. He made the statements honestly and without any indirect or improper motive.

Accordingly, I dismissed the plaintiff's claim with costs.

Also found at [1983] 1 CLJ 136